

SPECIAL CIVIL APPLICATION No 6941 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?  
No

STATE OF GUJARAT

Mr.Gohil, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/99

ORAL JUDGEMENT

1. This writ petition, under Article 226 of the Constitution of India, has been filed by the wife of the detenu challenging the detention order passed against the detenu by the Commissioner of Police on 24.6.1998 under Section 3(2) of the Prevention of Anti-social Activities Act (for short 'PASA') and for immediate release of the husband of the petitioner from illegal detention.

2. Brief facts are that a case under the Bombay Prohibition Act was registered against the detenu who was arrested by the police on 22.6.1998. 318 bottles of foreign liquor, worth Rs.54,500/-, were recovered from his possession. The detenu was produced before the Magistrate. Remand was granted by the Magistrate and before the period of remand could expire the impugned detention order was passed hurriedly by the Detaining Authority. Two confidential witnesses were examined by the Sponsoring Authority in between on 23.6.1998. On the basis of aforesaid material, viz. registration of a case under the Bombay Prohibition Act against the detenu and statement of two confidential witnesses the impugned order was passed which is under challenge in this writ petition.

3. According to the learned A.G.P. recovery of huge quantity of foreign liquor worth Rs.54,500/- from the petitioner was an abnoxious activity which had created disturbance of public order. This contention can hardly be accepted. Recovery of foreign liquor from the detenu can only be said to be activity which may safely be described as bootlegging activity within the meaning of Section 2(b) of the PASA. In the absence of requisite material that at the time of arrest, search and seizure the petitioner created such situation which was prejudicial for maintenance of public order, this incident could not be placed in service for observing that the activity of the petitioner on this occasion was prejudicial for maintenance of public order. At the most the petitioner violated the provisions of Section 66(b) and 65(a) of the Bombay Prohibition Act. For that he was booked and that was sufficient remedy against the detenu.

4. A bootlegger cannot be preventively detained merely because he is engaged in such activity. Bootlegging activity perse cannot be considered to be

prejudicial for maintenance of public order. Unless such activity is found to be prejudicial for maintenance of public order preventive detention can hardly be sustained. Hurried preventive detention which is reflected in the instant case, can hardly be appreciated. The detenu was also in judicial custody. There is no bar in passing preventive detention order when a person is in judicial custody. Awareness was exhibited in the grounds of detention, viz. the detaining Authority was aware that the detenu was in judicial custody and he was likely to apply for bail and may be released on bail and may thereafter engage in similar activity. However, hurried manner in which detention order was passed is alarming and cannot be ignored. As stated earlier the detenu was arrested in a case under the Bombay Prohibition Act on 22.6.1998 and within two days, viz. on 24.6.1998 the impugned order of detention was passed. If the activities of detenu were really prejudicial for maintenance of public order at least the Sponsoring Authority should have contacted the witnesses earlier. On the other hand he contacted the witnesses only on 23.6.1998 when the statements of two witnesses were recorded by him. Careful examination of those statements will further reveal that even these incidents have nothing to do with disturbance of maintenance of public order. They were solitary incidents between the detenu and the witnesses and few persons who collected at the spot. For the incident dated 28.5.1998 usual story has come forward that the detenu asked the witness to keep stock of liquor in his house because the police was checking the vehicles. The witness refused to keep the stock of liquor whereupon the detenu became excited. He started beating the witness and upon alarm raised by the witness members of public collected. The detenu then ran towards them with open knife and due to this activity of the detenu people started running here and there. Atmosphere of terror was spread. On the face value of this statement it cannot be said that even tempo of the life of the locality was disturbed. This incident is not enough for coming to the conclusion that the activity of the detenu was prejudicial for maintenance of public order.

5. The second incident narrated by the other witness also does not give indication that it was prejudicial for maintenance of public order. The witness was beaten by the detenu on the suspicion that he was police informer and he was passing on information regarding activity of the detenu to the police. Upon his alarm persons of the locality collected. The detenu chased the witnesses who collected at the spot showing open knife due to which

terror and fear spread over the area and daily routine, transaction and traffic was disturbed. Such minor disturbance cannot be said to have actually disturbed public order. Disturbance of law and order cannot be equated with disturbance of public order. Nature of the activity narrated by the two witnesses cannot be taken in the sense that it was prejudicial for maintenance of public order. As such the detenu who is a bootlegger could not be preventively detained because his activities were not prejudicial for maintenance of public order. The detention order therefore cannot be sustained.

6. The writ petition consequently succeeds and is hereby allowed. The detention order dated 24.6.1998 is hereby quashed. The detenu shall be released forthwith unless he is wanted in some other case.

sd/-

Date : February 03, 1999 ( D. C. Srivastava, J. )

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